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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,266	07/19/2002	Natalie Bryant	FREEH2.002APC	2913
23446 7590 02/11/2008 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
COBURN, CORBETT B				
ART UNIT		PAPER NUMBER		
3714				
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02/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/070,266

**Applicant(s)**

BRYANT ET AL.

**Examiner**

Corbett B. Coburn

**Art Unit**

3714

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-11 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-11 & 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8, 10, 11 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (US Patent Number 5,947,821) in view of Olsen (US Patent Number 6,110,043).

**Claims 1, 6:** Stone teaches a gaming machine that includes a display (44) for displaying combinations of symbols. There is a controller (110) for controlling operation of the machine. The controller includes a processor for selecting the outcome of the game (i.e., a poker hand) and displaying it on the screen. The gaming machine is adapted to play a base game (i.e., poker) in which the player places a base bet to purchase at least one outcome and if the outcome is a winning outcome, the machine awards a prize that is determined by the payable. There is a selector (51) operable on payment of an additional bet prior to the commencement of the base game. When the selector is operated (i.e., when the additional wager(s) are made), the controller adds at least one additional feature to the base game – participation in a progressive jackpot game. The game is not, however triggered in the base game where the trigger event is independent of the outcome in the base game. Olsen teaches a progressive game that is triggered by an event independent of the outcome of the base game – the progressive pool reaching a

randomly determined trigger amount. (Abstract) Olsen discloses that this adds excitement to the game. (Col 2, 50-51) It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Stone in view of Olsen to have the feature game triggered in the base game where the trigger event is independent of the outcome in the base game in order to add excitement to the game.

Regarding the newly added limitation, Stone teaches offering a range of player selectable options prior to the commencement of the base game (i.e., the dealing of the player's poker hand). The player may select a wild card and may select whether or not to participate in a progressive jackpot. Furthermore, it would yield predictable results to offer even more options prior to the start of the base game. For instance, Stone suggests the possibility of buying a second wild card. It is certainly within the level of ordinary skill to offer this before the commencement of the base game & would lead to predictable results. Furthermore, doing so would tend to increase casino revenue. Therefore, Examiner concludes that Stone not only explicitly teaches the claimed limitation, it would be obvious to modify Stone to increase the range of options offered prior to the commencement of the base game.

**Claim 2:** Stone teaches the invention substantially as claimed, but fails to explicitly teach that the additional wagers are multiples of the base bet. Clearly the wager amount is a matter of design choice. A game designer can choose any value desired to be the wager amount.

**Claim 3:** Stone teaches taking a pre-game wager for a wild card (Abstract), for participation in a progressive jackpot (a feature game, Fig 1), and for an increased payout

(multiplier, Col 3, 39-47). (Stone also teaches a wager for a second wildcard, but this is disclosed as being made after the game starts.) While Stone does not teach that the wage is a multiple of the base bet, this is a matter of design choice.

**Claim 4:** Stone teaches multiple pre-game wagers (and features), but only illustrates a single selector. Clearly, if a player is offered multiple wagers, multiple selectors are required. Since the bets are interchangeable, any coin can be thought of as the base bet – including the last coin to be bet.

**Claim 5:** The additional at least one other bet staked provides eligibility to a benefit provided by that feature, there being no guarantee that the feature will award a prize merely by having staked the at least one other bet. There is no guarantee that the player will trigger the award of the progressive jackpot.

**Claim 8:** Stone teaches certain features that are comprise a series of game events purchased by the additional bet (award of the progressive jackpot). Other features (i.e. the multiplier) may comprise a series of game events that require the staking of additional bets. If the player chooses the multiplier, the player continues with the base game. The base game may allow the player to purchase a second wild card. (Fig 1A)

**Claims 10, 11:** Stone discloses selectors in the form of keypads & touch screens. (Col 5, 17-22)

**Claim 29:** Stone teaches that the selector is operated to add a wildcard, which is a player-favorable variation in the set of symbols from which the controller selects symbols for display. It also may add eligibility for a progressive jackpot which is a feature game in the event of a feature game trigger occurring in the base game.

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone & Olsen as applied to claim 1 further in view of Itkis (US Patent Number 4,856,787).

**Claim 9:** Stone & Olsen teach the invention substantially as claimed, but fail to teach allowing the player to select from a plurality of base games. It is well known that there are innumerable variations in poker. Itkis teaches allowing a player to select from various base game. This allows the player to choose the game he wishes to play. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Stone & Olsen in view of Olsen to allow the player to select from a plurality of base games in order to allow the player to choose the game he wishes to play.

#### ***Response to Arguments***

4. Applicant's arguments filed 15 January 2008 have been fully considered but they are not persuasive.
5. The arguments are drawn to the amended claims & are answered in the rejection above.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Corbett B. Coburn/  
Primary Examiner  
Art Unit 3714